

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
MATI GILL, : 11-cv-3706-JBW-VVP
Plaintiff, :
 :
- versus - : U.S. Courthouse
 : Brooklyn, New York
ARAB BANK, PLC, :
Defendant : October 25, 2012
-----X

TRANSCRIPT OF CIVIL CAUSE FOR DISCOVERY CONFERENCE
BEFORE THE HONORABLE VIKTOR V. POHORELSKY
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Plaintiff: Gary Osen, Esq.
Joshua Glatte, Esq.
Ari Ungar, Esq.
Aaron Schlanger, Esq.

For the Defendant: Kevin Walsh, Esq.

Transcription Service: Transcriptions Plus II, Inc.
740 Sharon Road
Copiague, New York 11726
Transcriptions2@verizon.net

Proceedings recorded by electronic sound-recording,
transcript produced by transcription service

Proceedings

2

1 THE CLERK: Civil Cause for Discovery
2 Conference, in 11-cv-3706, Gill v. Arab Bank.

3 Will counsel for the plaintiffs please state
4 their appearances for the record.

5 MR. GLATTER: Good afternoon, Judge Pohorelsky.

6 Joshua Glatter from Osen, LLC on behalf of
7 plaintiff Mati Gill. I'm joined on this call by my
8 colleagues Ari Ungar, Aaron Schlanger, and Gary Osen.
9 Mr. Schlanger and Mr. Osen -- I'll be principally
10 speaking on behalf of plaintiff but Mr. Osen or
11 Mr. Schlanger may supplement a few discrete issues,
12 depending on what questions the Court has.

13 MR. WALSH: And you have Kevin Walsh for Arab
14 Bank, your Honor.

15 THE COURT: Good afternoon. Can you all hear
16 me?

17 MR. GLATTER: Yes, your Honor.

18 MR. WALSH: Yes, your Honor.

19 THE COURT: I did receive the plaintiff's
20 letter of October 24th, as well as the defendant's
21 response dated October 25th. The plaintiff's letter asks
22 the Court to reconsider its rulings from two days ago and
23 as I understand the argument, it's premised on the fact
24 that there were requests, in fact, made on August 27th to
25 which responses were received on October 10th, which

Proceedings

3

1 sought discovery for a period of time post-2004.

2 And I'm not sure I completely understand the
3 argument but I think the plaintiff was acting under the
4 impression that my rulings with respect to the new
5 written discovery requests were premised on the fact that
6 they should have sought discovery for that period of time
7 after 2004. And having failed to do so, they could not
8 do so now.

9 I didn't mean to suggest by that ruling that
10 requests that were made during the time period set aside
11 for discovery were improper and that there was no -- it
12 strikes me that there was no reason why you couldn't have
13 moved to compel or to overrule the objections that were
14 lodged by the defendant to those August 27th requests.

15 In a sense, your October 24th proposed order,
16 the proposed order annexed to your October 24th letter,
17 essentially asks the Court to overrule those objections
18 and in a sense the October 24th letter could be taken as
19 a motion to compel.

20 Ultimately, I don't understand why any ruling
21 on requests timely made has anything to do with the
22 discovery requests that I ruled were out of time two days
23 ago. So maybe you can help me on that, Mr. Glatter.

24 MR. GLATTER: Yes, your Honor. Let me -- I'm
25 going to try to do that. I think the key thing to

Proceedings

4

1 understand is that the -- when we received the responses
2 to what we described as the second Gill Stockman (ph.)
3 requests on October 10th and those came in after we had
4 learned from Judge Weinstein that he was disinclined to
5 adopt the sanctions that Judge Gershon had issued in
6 Linde which arise out of the very discovery record that's
7 been imported into the case.

8 And therefore, with that knowledge and then
9 with now having been confirmed for the first time
10 substantively by the bank that it was affirmatively
11 refusing to produce or apparently even search for
12 documents outside of the United States based on its
13 continued assertion of foreign bank secrecy, the conflux
14 of both of those developments gave rise to the need to
15 issue or purpose issuing the draft discovery that was
16 attached to our October 22nd letter, the proposed
17 interrogatories and document requests because those
18 function to essentially substitute or as meaningfully as
19 they can, for records that the defendant is now
20 affirmatively refusing to produce.

21 And that's important because it's not just a
22 function of what remedy the plaintiffs are entitled to to
23 restore the evidentiary balance but it's because under
24 the defendant's logic, their position appears to be and
25 frankly that's I believe reflected in their letter of

Proceedings

5

1 today, that the substantive objection itself to
2 production under foreign bank secrecy law is essentially
3 back to square one.

4 And so because we couldn't really put that
5 picture together until October 10th at the earliest,
6 that's what gave rise to the need to purpose additional
7 pretrial discovery and we immediately presented that to
8 Judge Weinstein the very next day on October 11th.

9 MR. WALSH: May I respond, your Honor.

10 THE COURT: You may but I must say I do not --
11 I am still not understanding -- and again, I did not
12 compare the discovery requests that were the subject of
13 the Court's rulings two days ago with the second Gill
14 document request.

15 MR. GLATTER: I think it's -- I'm sorry, your
16 Honor.

17 THE COURT: To the extent that they don't
18 overlap, then the fact that you were surprised by Judge
19 Weinstein's ruling --

20 MR. GLATTER: Yes, your Honor, I --

21 THE COURT: I guess what I'm trying to say is
22 that the fact that you were surprised by Judge
23 Weinstein's ruling doesn't furnish a reason for you to
24 have failed to ask for those things beforehand. And to
25 the extent that you already did ask for those things,

Proceedings

6

1 well you're entitled to make a motion to compel which is
2 what I'm basically taking the October 24th letter to be.

3 But I don't know why -- well the lateness of
4 the defendant's response certainly justifies an emergency
5 application to compel -- I said the lateness, the fact
6 that they have responded on the 10th to the earlier -- to
7 the second Gill document requests. I mean that's when
8 they -- when the -- a motion to compel got teed up as to
9 those requests.

10 It does not seem to me to furnish a reason or
11 an excuse for not having asked for the other things that
12 were the subject of the most recent set of discovery
13 requests. And so therefore, I don't find any basis to
14 upset my rulings from two days ago.

15 Mr. Walsh, you can be heard if you wish.

16 MR. WALSH: No, your Honor. If, in fact,
17 there's no need to address the reconsideration motion, I
18 prefer to save the time of the Court.

19 THE COURT: So let me turn though to the fresh
20 set of requests which I think are best -- are the fresh -
21 - are the new discovery rulings that I am being asked to
22 make because -- and I think those are best teed up by the
23 proposed production order that's Exhibit C to the
24 plaintiff's submission.

25 MR. GLATTER: Your Honor, yes, I think that's

Proceedings

7

1 correct and I would only add the observation that to the
2 extent that it's a new ruling, I think that that's
3 probably only to the extent that it is applying to the
4 slightly expanded relevant period for this case.

5 We noted in our letter yesterday and the other
6 day, your Honor issued a ruling on December 10, 2007
7 after extended motion practice initiated by the defendant
8 seeking clarification of the May 7, 2007 order. And in
9 that ruling your Honor concluded that the materials
10 requested in plaintiff's broader scope were relevant,
11 were appropriate. That the fact that they sought to
12 gather documents from a larger geographic area than
13 merely the Palestinian territories, Lebanon and Jordan,
14 was appropriate.

15 So to some extent I think the Court's ruling
16 here today builds upon the prior findings issued back in
17 December of 2007.

18 MR. WALSH: Your Honor, I confess that I am
19 somewhat confused. It appears that the plaintiff is
20 asking you to enter an order compelling Arab Bank to
21 produce documents that were never requested of it because
22 there was no such timely request. And I am mystified as
23 to how we can put such a procedural cart before the horse
24 here.

25 THE COURT: Well I think what -- if I

1 understand what Mr. Glatter is saying, he's saying that
2 the document production order that is Exhibit C asks for
3 fresh records, or as a fresh request for discovery only
4 to the extent that it asks for records for the period
5 from 2005 to 2008.

6 That to the extent that it requires production
7 of records prior to 2005, it is merely an order that
8 mimics maybe not exactly but certainly doesn't ask for
9 more than or doesn't require more than what had been
10 ordered by me in the Linde action back in December or
11 whatever date in 2007 I entered that order.

12 So that in a sense, this production order
13 simply memorializes what I think the parties as I
14 understand the record in this case, were entitled to
15 infer from Judge Weinstein's rulings that the discovery
16 in the Linde case would apply here. And that would mean
17 that discovery responses and it seems to me any rulings
18 on the motion -- I mean any orders by the Court that
19 discovery be produced.

20 Now I mean that it seems to me is a fair
21 assessment of what Judge Weinstein intended when he said
22 that the discovery from the Linde action would apply
23 here. But I gather, Mr. Walsh, that you dispute that.

24 MR. WALSH: Well I'm looking at page 2 of Mr.
25 Osen's letter of yesterday's date, your Honor, and

Proceedings

9

1 there's a reference to in item C, a request for record
2 preservation purposes of categories of additional
3 discovery beyond those requested and I'm not certain as
4 to how, if at all, that figures in what your Honor is
5 being asked to do.

6 THE COURT: Okay. Well, maybe I --

7 MR. GLATTER: Your Honor, I can address that if
8 you would like.

9 THE COURT: Yes, you can. I was focused -- and
10 let me tell you where my perhaps misunderstanding about
11 the scope of the production order comes from and it comes
12 from the explanation in the October 24th letter -- where
13 is it -- my goodness, I was just reading it. As I
14 understood the scope of the order as laid out on page
15 6 --

16 MR. GLATTER: Of our letter, your Honor?

17 THE COURT: Yes.

18 MR. GLATTER: That's correct, your Honor and --

19 THE COURT: And that it basically asks the
20 Court to order -- that the defendant produce documents
21 requested in the -- by the second Gill document request
22 for the period from 2005 to 2008. Now maybe it actually
23 goes beyond that.

24 MR. GLATTER: No, your Honor, it doesn't. Let
25 me just take a step back. I believe what Mr. Walsh was

1 referring to with respect to categories of additional
2 discovery, that's subpoint C on page 2 of our letter of
3 last evening.

4 THE COURT: Right, exactly.

5 MR. GLATTER: And that is not material that is
6 covered in the proposed production order. That is
7 essentially request the Court, at least make our -- if it
8 pleases the Court, to make a record to acknowledge that
9 those additional categories of discovery are relevant and
10 appropriate. They're not being ordered for production
11 because number one, the defendant will refuse to produce
12 it or to allow its witnesses to so testify on those
13 issues based on its document position on foreign bank
14 secrecy and secondly, because of the compressed schedule
15 for this case, there isn't sufficient time to collect
16 such discovery. That is a different issue from the much
17 more narrow and targeted discovery that's set forth in
18 the proposed production order which -- and your Honor I
19 think captured this perfectly a few moments ago,
20 essentially falls into two areas: number one it -- to a
21 degree it resurrects the prior production requests that
22 were extant in the May 7th order that essentially became
23 somewhat dormant once the proceedings moved into
24 analyzing what Rules 37 remedy would issue in the Linde
25 case which as your Honor acknowledged at a November

1 hearing, likely mooted the need to proceed further to
2 analyze whether the May 7th order needed to be further
3 modified.

4 Secondly, in order to then harmonize it with
5 the expanded discovery period for this case, it sweeps
6 within it those documents that were requested in the Gill
7 plaintiff's second document request which essentially
8 asks for all transactions for what is now the same set of
9 individuals and entities and really the only difference
10 is that rather than being cut off at the 2004 year, it
11 covers for the additional period of 2008. And that way
12 it essentially addresses both issues universally.

13 THE COURT: Right.

14 MR. GLATTER: So hopefully that clarifies it.

15 THE COURT: It does in my mind and Mr. Walsh,
16 you may respond but as I understand it, Mr. Walsh's
17 objection and you can clarify for this for me if you --
18 because I want to make sure I understand your objection,
19 Mr. Walsh, you are reading subparagraph -- I should say
20 paragraph C on page 2 of the October 24th letter, as
21 basically a request that the Court order the production
22 of documents that were never requested.

23 And that's not what the plaintiff is seeking
24 now but I gather what the plaintiff is seeking is some
25 ruling by me that had those documents been requested,

1 they would have been appropriate for discovery in this
2 case. And that's --

3 MR. WALSH: I appreciate this clarification
4 from the plaintiff, your Honor. Again, I would note that
5 it seems highly irregular that we are seeing an order to
6 compel the production of documents never requested.

7 But our fundamental objection, your Honor, now
8 that we have this clarification that we're only -- the
9 plaintiff is seeking only to extend the time period with
10 respect to discovery requests already made in Linde, our
11 primary objection, your Honor, is that an order of the
12 sort being requested here has utility to the plaintiff
13 for only one reason and that is to tee up a sanction
14 proceeding of the sort that was done in Linde.

15 And here we have a rather clear statement from
16 Judge Weinstein that he does not believe evidentiary
17 sanctions are appropriate which raises the question,
18 your Honor, of what the value of this is, especially if
19 it will only serve as a further international provocation
20 to governments that have already made their position
21 crystal clear in the ways we've set forth in our letter
22 to you, your Honor.

23 We don't understand what the point of this is.
24 It can have no point other than to seek to begin another
25 sanctions process of the very sort we were through in

Proceedings

13

1 Linde.

2 THE COURT: Well, did you want to respond?

3 I'll let the plaintiff respond.

4 MR. GLATTER: Yes, thank you, your Honor. With
5 respect to the defendant's substantive effort in their
6 letter today to convince your Honor apparently that no
7 sanction is warranted or as I read it, no production
8 order is warranted. I mean that's really where the
9 rubber meets the road. The claim is not so much what
10 remedy is appropriate but that the bank should not even
11 be ordered to produced anything. That's not the issue
12 that's here today.

13 Your Honor issued a ruling in November 2006
14 regarding whether the Court would honor the defendant's
15 objection to production. After a careful balancing test
16 under the restatement overruled that. Judge Gershon
17 affirmed that order. You reinforced that ruling in your
18 December 10, 2007 ruling. I could spend an hour going
19 through the analysis set forth in Mr. Walsh's letter
20 today and pick it apart but I don't think unless your
21 Honor has any particular interest, that there's any need
22 to do that.

23 But in focusing on Mr. -- rather on
24 Judge Weinstein's prefatory comments on October 3rd, a
25 couple of things should be clear. Judge Weinstein has

Proceedings

14

1 not said that he is not going to issue sanctions in this
2 case. He has not said what, if any, sanction he is going
3 to issue at trial. He has given some general
4 observations regarding how he views it. He has
5 nevertheless allowed us to argue it. His comments at
6 best were pegged to what inferences he might draw at
7 summary judgment.

8 And it may ultimately be that Judge Weinstein
9 determines that he doesn't want to issue an adverse
10 inference instruction to the jury. He doesn't want to
11 preclude the defendant from making arguments or offering
12 evidence. I don't know that today. Nobody does.

13 He may, however, conclude that he wants to
14 sanction the bank monetarily to the tune of millions of
15 dollars a day for its refusal to produce relevant
16 discovery. Frankly, if Mr. Walsh read the article that
17 he cited in his letter, Judge Weinstein actually back in
18 1956 observed a case involving Swiss Bank that refused to
19 produce documents. That Swiss Bank was a plaintiff. The
20 trial judge dismissed the suit with prejudice,
21 notwithstanding the bank secrecy objection and
22 Judge Weinstein said, "There can be little doubt of the
23 soundness of this decision." That part of the article
24 was not mentioned in Mr. Walsh's letter.

25 But the fact of the matter is, is that what we

1 are entitled to independent of remedy, if nothing else,
2 is a ruling that determines that the factors under the
3 restatement again support requiring the defendant to
4 produce the documents.

5 Whatever remedy flows out of that decision is a
6 matter for Judge Weinstein's discretion under Rule 37
7 which may or may not be impacted by the ruling of the
8 Court of Appeals in the Linde case but that is a
9 different issue from what the May 7 order accomplishes.
10 It is simply a document production order which based on
11 the Court's November 2006 ruling concerning the
12 substantive foreign bank secrecy objection and the
13 Court's balancing analysis under restatement 442 over
14 rule's that objection and requires production. It is
15 essentially just documenting what the Court found in
16 November 2006 and then reinforced in December 2007.

17 MR. WALSH: Your Honor, Mr. Glatter's comments
18 beg the question here and he hasn't responded to my
19 observation, that the sole purpose for this production
20 order is for him to use it as a springboard to seek
21 sanctions. I mean we know that the statements of Judge
22 Weinstein are before you, your Honor. You can read those
23 as easily as we can and Mr. Glatter can and we allow
24 those comments to speak for themselves.

25 But the position of the bank is clear. It has

1 asserted bank confidentiality laws in response to these
2 document demands. The purpose of this production order
3 is solely to seek a sanction order as to which we already
4 have a rather explicit statement from the Court that will
5 oversee any trial if one is to be conducted in this
6 action.

7 We think that this is just an unreasonably
8 provocative action that will be inflammatory of
9 international relations. We can look to the long history
10 of this as it transpired in the Linde case. We know
11 where it's ended which at the moment is before the Court
12 of Appeals. We just don't think that the purpose for
13 which the plaintiff wants this in light of the procedural
14 status of everything in Linde and what Judge Weinstein
15 has said here is appropriate.

16 MR. GLATTER: Your Honor, one additional
17 observation with respect to Mr. Walsh's comments just
18 now; I don't think they're at odds with anything that I
19 pointed out a few moments ago. One cannot do any
20 analysis of what, if any, appropriate remedy is under
21 Rule 37 without first having an order in hand to produce
22 the materials.

23 And the only other thing I point out is as was
24 the case back in December 2007, this order is global in
25 scope. Notwithstanding Mr. Walsh's comments about how

Proceedings

17

1 this is going to cause an international incident and I
2 need to start digging my bunker right now, the fact of
3 the matter is is that there are documents that logically
4 need to be produced from England. They need to be
5 produced from Germany because the bank had accounts for
6 specially designated global terrorists in both of those
7 nations. Courts in this district have assessed bank
8 secrecy objections in England and in France. I don't
9 know if they've done it in Germany. And they have
10 overruled them. There are cases my firm is litigating
11 and all I can tell -- say beyond that is we have defeated
12 those bank secrecy objections and the cases have
13 proceeded and there has not been Rule 37 sanctions
14 practice that followed.

15 So the bottom line is that Judge Weinstein has
16 made it clear that he intends to evaluate all these thing
17 ab initio and in light of that, he's entitled to have a
18 document production order in place for these materials
19 which your Honor has already concluded years ago were
20 highly relevant and appropriate and enabled the
21 plaintiffs to trace the trail of funds as deep as
22 possible and as internationally as possible because
23 that's the way this game works in terrorism financing.

24 And at that point, it's in Judge Weinstein's
25 hands or he may refer it back to your Honor for report

Proceedings

18

1 and recommendation on Rule 37 implications of that but we
2 have to start with first principles.

3 THE COURT: Mr. Walsh, I'll give you the last
4 word, if you want.

5 MR. WALSH: I don't know what to make of
6 Mr. Glatter's reference to this as a game, your Honor, so
7 I'll leave that phrase alone. But, you know, I can only
8 repeat and I won't do it at length, your Honor, that
9 things have changed significantly since your Honor
10 entered the Linde order at issue. We tried to point out
11 in our letter to the Court that there has been extensive
12 development in the case law, including at the Supreme
13 Court level, the American Bar Association has weighed in.
14 The landscape has changed entirely with respect to what
15 the jurisprudence is on the subject. And to view it as
16 the plaintiff is doing is simply the reflexive
17 application of what was done in 2006, we don't think is a
18 fair way to view the legal issues that are now presented
19 in 2012, your Honor.

20 THE COURT: Okay.

21 MR. GLATTER: Your --

22 THE COURT: No, no. No, no. You've had plenty
23 of chance to argue.

24 MR. GLATTER: No, I --

25 THE COURT: You've had plenty of chance to

Proceedings

19

1 argue. Let me make my observations.

2 MR. GLATTER: Yes, sir.

3 THE COURT: I have read both letters. I've
4 read them as carefully as I could given the constraints
5 of time. I am not guided in this by trying to determine
6 what Judge Weinstein will or will not do, what motivated
7 him to say what he did or did not say in the past and
8 what he will or will not do with respect to any discovery
9 rulings I make.

10 I am approaching this as the judge who is being
11 asked to make discovery rulings, as I am in any number of
12 cases and I do that looking at the case, not from the
13 standpoint of how I think the district judge or the judge
14 who may be the trial judge in the case expects me to rule
15 or thinks I should rule; I do it -- I approach it the way
16 I think it ought to go. And that's what's guiding me
17 here.

18 I do have to assess based on the developments
19 in the intervening years since 2007 when the -- I think
20 that's the last time I said anything about bank secrecy
21 in this case. I do have to assess whether developments
22 in the period of time since then should change my mind
23 with respect to the bank secrecy objections that the bank
24 has now lodged in response to the second Gill production
25 order. The landscape has, in fact, changed.

Proceedings

20

1 That said, I haven't yet had the chance to
2 carefully consider how much it has changed and I don't
3 have the luxury of time, given the schedule that we're on
4 to assess it the way I would if I had more time.

5 I have reviewed what the defendant said has
6 changed the landscape. It has not changed my mind and my
7 impression about the need for this kind of an order in
8 this kind of a case. I understand that this may have
9 some implications for international relations but -- and
10 that that is something that at least some of the
11 authorities think this court ought to take into
12 consideration but it's very difficult for me to assess
13 that and to give that an extended amount of weight. And
14 so, I can't say that I do.

15 The other considerations that underlie or
16 underlay my decision in 2007 still apply, I believe and
17 therefore, I think that an order of the kind that is
18 requested by the plaintiff here is appropriate for me to
19 enter and that's what I will do because I understand it
20 only to compel documents that were timely requested and
21 to otherwise essentially make the same record here to the
22 extent that there's any confusion about whether the
23 document requests and the order that I entered in the
24 Linde case with respect to documents that were to be
25 produced there, doesn't apply here because I believe that

1 there's adequate basis for ordering those documents here.
2 I did at the time and I do now again.

3 So the document production order -- and you
4 know, I did try to review it as I understand it and I
5 want to make this absolutely clear because if it goes
6 beyond what was requested in the August 27th letter or
7 what I ordered to be produced in the Linde action, then I
8 am not -- then it's not intended to go any farther than
9 that.

10 But as to those documents that were requested
11 in the second Gill document request, and to the extent
12 that these requests -- I mean, this order covers
13 documents previously ordered to be produced in Linde, it
14 is entered and I'll sign it and I will enter it. So
15 that's the ruling.

16 MR. GLATTER: Thank you, your Honor.

17 THE COURT: I believe that -- I know this puts
18 everybody under a tight schedule but the bank has to make
19 its position clear with respect to whether it's going to
20 abide by the order or it's going to continue to assert
21 bank secrecy -- you have the right obviously to appeal as
22 well, Mr. Walsh.

23 MR. WALSH: We understand that, your Honor.

24 THE COURT: Yes. But you do have the right --
25 you need to make it clear by October 29th whether or not

Proceedings

22

1 you will comply with the order or in what respect you
2 will or won't or you certainly are entitled to appeal.

3 MR. WALSH: Well, your Honor, I think I can
4 state today, especially in light of the fact that this
5 very issue is now pending before the Court of Appeals
6 that the bank will not violate the criminal laws of these
7 jurisdictions and maintains the position today that it
8 articulated in its appeal that it believes that
9 inappropriate that it be sanctioned for its lawful
10 compliance with these penal laws.

11 THE COURT: Okay. I take it then that you will
12 maintain, at least with respect to the second Gill
13 document request, you maintain the same objections that
14 you had then. You will just -- you won't go any --
15 beyond what you've already provided in response to that
16 and you won't go beyond what you've already provided in
17 connection with the earlier order.

18 MR. WALSH: What we would like, your Honor, is
19 as the Court suggested, the opportunity to evaluate our
20 right of appeal of this order.

21 THE COURT: Well you --

22 MR. WALSH: And to exercise the timely right of
23 appeal, should we choose to pursue it.

24 THE COURT: You do have that right and I won't
25 impinge on that.

Proceedings

23

1 MR. WALSH: Thank you, your Honor.

2 MR. GLATTER: Your Honor?

3 THE COURT: All right. Is there anything else?

4 Now, I --

5 MR. GLATTER: (Indiscernible).

6 THE COURT: I reject the request that I enter a
7 discovery ruling on requests not made. So to the extent
8 that in the October 24th letter, there is a request that
9 I make some findings and then I am referring to paragraph
10 C of the October 24th letter -- I'm looking for it here.
11 Oh, here it is -- I am not making any rulings with
12 respect to requests not made.

13 MR. GLATTER: Your Honor, in other words, the
14 description set forth at pages 12 and 13 of our letter of
15 yesterday; correct? I just want to make sure --

16 THE COURT: Yes, I'm looking through this. I
17 mean to the -- I understand that to be documents and --
18 well there's depositions and basically information not
19 previously requested.

20 MR. GLATTER: Well, your Honor, the only thing
21 I would say is that it's not entirely divorced from the
22 documents that are being ordered produced in Exhibit C.
23 In other words, the type of discovery that's described at
24 pages 12 and 13 of Mr. Osen's letter of yesterday, just
25 from a common sense standpoint would be the sorts of

1 questions one would likely put to witnesses, both of the
2 formerly deposed witnesses and 30(b)(6) representatives
3 of the bank's branches outside Jordan, Palestine and
4 Lebanon, if the bank actually agreed and complied with
5 its discovery obligations in the proposed production
6 order that your Honor is going to be entering today.

7 I don't think -- in other words, our point with
8 those requests is just to point out even if the document
9 production order is entered, the schedule for the case
10 and the bank's continuing assertion of bank secrecy which
11 you just heard from Mr. Walsh a moment ago, would
12 essentially moot and render irrelevant initiating any of
13 this discovery which we would otherwise logically be
14 entitled to. I mean if you go through it point by point,
15 it's the sort of (indiscernible) --

16 THE COURT: I could cut you off. I could cut
17 you off. I disagree. Even if they had provided all that
18 information because you had not timely requested that
19 additional discovery, you would not have been entitled to
20 get it. There was a discovery cut-off. The discovery
21 responses to the August 27th -- you didn't request that
22 discovery during the time period. Maybe you could have
23 gotten it in follow-up discovery but you wouldn't have
24 had time for the follow-up discovery.

25 So I am -- to the extent that you're asking me

Proceedings

25

1 to make the determination that these are things that you
2 could have gotten had you gotten -- had you made a timely
3 request, I'm afraid I'm declining -- I will decline to
4 rule on that. Okay?

5 MR. GLATTER: I understand, your Honor.

6 THE COURT: All right.

7 MR. GLATTER: My colleague, Mr. Osen, had one
8 other clarifying question if I could pass the mic.

9 THE COURT: Okay. Sure.

10 MR. OSEN: Good afternoon, your Honor. Just
11 for purposes of the production order itself, it may make
12 sense to still reference October 29th to the extent that
13 the language says, defendant shall produce by a certain
14 date.

15 THE COURT: Yes, I know, on the first page. I
16 saw --

17 MR. OSEN: Right, right. So, I mean I think
18 you can word it --

19 THE COURT: I'm going to enter --

20 MR. OSEN: -- however you want but the date
21 probably -- something to indicate that there was a time
22 certain.

23 THE COURT: Yes, I will do that.

24 MR. WALSH: Your Honor, in connection with any
25 possible appeal by the bank, may we inquire if the Court

Proceedings

26

1 plans on issuing a written opinion of any length or if we
2 should rely on the transcript today?

3 THE COURT: You'll need to rely on the
4 transcript. I just simply do not anticipate being able
5 to issue a written decision between now and -- well, I
6 just don't think I'm going to have the opportunity to
7 enter a written decision.

8 MR. WALSH: Thank you.

9 THE COURT: But the ruling does rest entirely
10 on the considerations that were articulated in the Linde
11 case.

12 MR. GLATTER: And thus, today's transcript is
13 so-ordered; correct, your Honor?

14 THE COURT: I don't know what you mean by the
15 transcript is so-ordered.

16 MR. GLATTER: I --

17 THE COURT: The reasons for the decision that
18 has been announced today are contained in the transcript.

19 MR. GLATTER: Understood.

20 THE COURT: Okay.

21 MR. GLATTER: Technical point.

22 THE COURT: Okay. All right. Anything else?

23 MR. GLATTER: Not from plaintiff, your Honor.

24 MR. WALSH: No.

25 THE COURT: Very well.

Proceedings

27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. GLATTER: Thank you.

MR. WALSH: Thank you.

MR. OSEN: Thank you, your Honor.

THE COURT: Goodbye.

(Matter concluded)

-o0o-

C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 26th day of October, 2012.



Linda Ferrara

CET**D 656
Transcriptions Plus II, Inc.